

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

KRISTEN MAVROULES,
Appellant

v.

G1-06-79

CITY OF PEABODY,
Respondent

Appellant's Attorney:

Pro Se
Kristen Mavroules
17 Margin Street
Peabody, MA 01960
(978) 532-6928

Respondent's Attorney:

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(978) 532-2060

HRD's Attorney:

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Human Resources Division
One Ashburton Place: Room 207
Boston, MA 02108
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Commissioner:

Donald R. Marquis

DECISION ON HRD'S MOTION TO DISMISS

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Kristen Mavroules (hereafter "Mavroules" or Appellant") sought review of the Personnel Administrator's decision to accept the reasons of the City of Peabody (hereafter "Appointing Authority" or "City") bypassing her for original appointment to the position of permanent reserve

police officer in the Peabody Police Department. The Appellant's appeal was timely filed and a pre-hearing was held on July 20, 2006 at the offices of the Civil Service Commission. Subsequent to the pre-hearing, the state's Human Resources Division (HRD) filed a Motion to Dismiss with the Commission on July 26, 2006. The Pro Se Appellant filed an response with the Commission on August 2, 2006.

The Appellant was considered for original appointment by the City of Peabody for the position of Permanent Reserve Police Officer. (See Certification No. 251010.) In connection with her candidacy, the Appellant participated in the HRD Physical Abilities Test (PAT) on November 29, 2005. (See Notice of Appellant's Results for the PAT Conducted on November 29, 2005). There is no dispute that the Appellant did not pass this initial PAT test. In her response, the Appellant states, "I was unable to successfully pass the first PAT test due in part to the inability to get over the wall that is included in the obstacle course...".

The Appellant participated in the PAT again on March 9, 2006. (See Notice of Appellant's Results for the PAT Conducted on March 9, 2006). Again, there is no dispute that the Appellant did not pass the second PAT. In her response, the Appellant states in relevant part, "...[I] exceeded the time limit by about ten seconds on the second PAT test due to difficulty in getting over the wall."

Citing G.L. c. 31, §61A, and arguing that the Appellant does not state a claim upon which relief can be granted, HRD filed the instant Motion to Dismiss with the Commission.

G.L. c. 31, §61A

G.L. c. 31, §61A states in relevant part, “No person appointed to a permanent, temporary or intermittent, or reserve police or firefighter position after November first, nineteen hundred and ninety-six shall perform the duties of such position until he shall have undergone initial medical and physical fitness examinations and shall have met such initial standards. The appointing board or officer shall provide initial medical and physical fitness examinations. If such person fails to pass an initial medical or physical fitness examination, he shall be eligible to undergo a reexamination within 16 weeks of the date of the failure of the initial examination. If he fails to pass the reexamination, his appointment shall be rescinded.”

Summary of Appellant’s Response to Motion to Dismiss

In her August 2, 2006 response, the Pro Se Appellant questions the validity of that portion of the PAT involving the wall exercise. Further, she states in her response that, “I have been informed that an outside consultant...has been hired and awarded a contract with the Commonwealth of Massachusetts to re-evaluate the entry-level police officer PAT examination, in which there was a scheduled panel meeting on August 1, 2006, in which I had attended...The primary focus of this panel meeting was to discuss the different types of walls encountered by police officers, the frequency in which the average officer encounters each type of wall, the frequency in which the average officer scales each type of wall, and the method(s) used to scale the walls.” Therefore, the Appellant argues that the Commission should deny HRD’s Motion to Dismiss and schedule a full hearing on the matter, presumably after the outside consultant has had an opportunity to issue his findings on the test in question. Finally, the Pro Se Appellant

seeks a continuance until such time as she can retain counsel. Several months have now passed and the Commission has not received a Notice of Appearance from any counsel purporting to represent the Appellant in the instant appeal.

Conclusion

The issue for the commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The facts in this case are undisputed. The Appellant, a candidate for the position of reserve police officer in the City of Peabody, twice failed a Physical Abilities Test administered by the state's Human Resources Division. G.L. c. 31, §61A is unambiguous under such circumstances, stating that any appointment must be rescinded if the candidate fails such a reexamination. While the Commission endorses HRD's appropriate review of any aspect of the process used to screen police officer candidates, it does not change the outcome of the instant appeal.

The City and HRD acted appropriately in bypassing the Appellant after she was unable to pass the Physical Abilities Test required of all similarly situated police officer candidates. For this reason, HRD's Motion to Dismiss is allowed and the Appellant's

appeal under Docket No. G1-06-79 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin and Marquis, Commissioners [Goldblatt, Chairperson, Taylor, Commissioner – Absent]) on March 1, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

Wendy Chu, Esq. (HRD)

Kristen Mavroules

Daniel Kulak, Esq.